

SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

SUSSEX COUNTY COURTHOUSE
1 The Circle, Suite 2
GEORGETOWN, DE 19947

June 9, 2011

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RE: Michael P. Burris v. Beneficial Delaware, Inc.
C.A. No. S11A-01-002
Letter Memorandum

Date Submitted: March 22, 2011

Dear Counsel:

This is my decision on the appeal filed by Michael P. Burris of the decisions made by the Court of Common Pleas (1) denying the Motion to Dismiss filed by Burris, and (2) granting the Motion for Summary Judgment filed by Beneficial Delaware Inc. in this debt collection case. Beneficial filed a complaint in the Court of Common Pleas against Burris for monies due under a Personal Credit Line Agreement. The Agreement contained a provision allowing either party to submit a dispute between them to arbitration. Burris informed Beneficial of his election to resolve the dispute through arbitration, but did nothing to initiate the arbitration proceedings. Burris then filed a Motion to Dismiss Beneficial's complaint, arguing that his election to submit the matter to arbitration divested the Court of Common Pleas of jurisdiction. Commissioner Maybee denied the Motion to Dismiss, reasoning that the failure by Burris to do anything more than elect to submit the matter to arbitration was not enough to divest the Court of Common Pleas of jurisdiction. The Court

of Common Pleas denied the appeal filed by Burris of Commission Maybee's decision. Beneficial then filed a Motion for Summary Judgment, which included an affidavit detailing the amount of principal, interest and attorney's fees that Burris owed. Burris filed a response to Beneficial's Motion for Summary Judgment, but did not include an affidavit contesting the amount owed. Commissioner Maybee granted Beneficial's Motion for Summary Judgment, reasoning that the failure by Burris to submit an affidavit in support of his response warranted the granting of summary judgment in favor of Beneficial. The Court of Common Pleas denied the appeal filed by Burris of Commission Maybee's decision. Burris then filed an appeal with the Superior Court.

STANDARD OF REVIEW

Superior Court Civil Rule 72(g) describes the procedure by which the Superior Court is to review an appeal of a decision by the Court of Common Pleas. It states, "[a]ppeals shall be heard and determined by the Superior Court from the record of the proceedings below, except as may be otherwise expressly provided by statute."¹ This means that when reviewing an appeal from the Court of Common Pleas, this Court reviews the decision in the same manner as the Supreme Court would consider an appeal.² The function of the Court is to correct errors of law and to review the factual findings of the court below to determine "if they are sufficiently supported by the record and are the product of an orderly

¹ Super. Ct. Civ. R. 72(g).

² *Fiori v. State*, 2004 WL 1284205, at *1 (Del. Super. May 26, 2004).

and logical deductive process.”³ First, errors of law are reviewed de novo.⁴ Second, “if substantial evidence exists for a finding of fact, this Court must accept that ruling, as it must not make its own factual conclusions, weigh evidence, or make credibility determinations.”⁵ “Substantial evidence” means “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”⁶ Substantial evidence is more than a scintilla but less than a preponderance.⁷

DISCUSSION

Burris makes two arguments in support of his appeal. One, Burris argues that he had no obligation under the Agreement to do anything more than inform Beneficial that he had elected to submit the dispute between them to arbitration. Two, Burris argues that Beneficial was not entitled to summary judgment because the affidavit that it submitted incorrectly calculated the interest due.

I. Arbitration

Burris argues that he had no obligation under the Agreement to do anything more than inform Beneficial that he had elected to submit the dispute between them to arbitration. The Court of Common Pleas disagreed, reasoning that plain language of the Agreement required the party initiating or “electing” arbitration must to do so by filing a

³ *Levitt v. Bouvier*, 287 A.2d 671, 673 (Del. 1972).

⁴ *Downs v. State*, 570 A.2d 1142, 1144 (Del. 1990).

⁵ *Fiori*, 2004 WL 1284205, at *1 citing *Johnson v. Chrysler*, 213 A.2d 64 (Del. 1965).

⁶ *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981).

⁷ *Id.*

claim for arbitration with one of the three arbitration administrators listed in the Agreement. The Court of Common Pleas also found that the party electing arbitration had to pay the initial filing fee at the time the request for arbitration is made. Since Burris did not file a claim for arbitration and pay the filing fee, the Court ruled that it still had jurisdiction over the case. Burris argues that after he elected arbitration, it was up to Beneficial to continue the process by filing a claim for arbitration with one of the arbitration administrators and pay the filing fee. The Court of Common Pleas found no support for this argument in the arbitration provisions of the Agreement. The applicable arbitration provisions of the Agreement are set forth below:

By signing this Arbitration Rider, you agree that either Lender or you may request that any claim, dispute, or controversy (whether based upon contract; tort, intentional or otherwise; constitution; statute, common law; or equity and whether pre-existing present or future), including initial claims, counter-claims, cross-claims, and third-party claims, arising from or relating to this Agreement or the relationships which result from this Agreement, including the validity or enforceability of this arbitration clause, any part thereof or the entire Agreement ("Claim"), shall be resolved, upon the election of you or us by binding arbitration pursuant to this arbitration provision and the applicable rules or procedures of the arbitration administrator selected at the time the Claim is filed. The party initiating the arbitration proceeding shall have the right to select one of the following three arbitration administrators: The American Arbitration Association ("AAA"). National Arbitration Forum ("NAF") or JAMS/Endispute ("JAMS").

* * * * *

If Lender files a claim, Lender shall pay all the filing costs. If you file a Claim, filing costs and administrative fees, (other than hearing fees) shall be paid as follows: (a) you agree to pay for the initial cost of filing the Claim up to the maximum amount of \$100.00.

* * * * *

You may contact, obtain the arbitration rules of, or file a Claim with AAA, NAF or JAMS as follows:

American Arbitration Association
335 Madison Avenue
New York, NY 10917

National Arbitration Forum (NAF)
P.O. Box 50191
Minneapolis, MN 55405

JAMS/Endispute
555 13th Street NW
Suite 400 West
Washington, DC 2004

The plain language of the Agreement sets up a process by which the party electing arbitration has to pick the arbitrator, file a claim, and pay the initial filing fee. While Burris may well have elected to submit the dispute to arbitration, he did not complete the process by selecting an arbitrator, filing a claim for arbitration, and paying the initial filing fee. The Court of Common Pleas correctly interpreted the arbitration provisions.

II. Summary Judgment

Burris argues that Beneficial was not entitled to summary judgment as a matter of law because the affidavit that it submitted incorrectly calculated the interest due. This Court reviews the granting of summary judgment by the Court of Common Pleas *de novo*.⁸ Burris admitted that he defaulted on the Personal Credit Line Agreement, but he disputed the amount owed. In its motion for summary judgment, Beneficial offered an affidavit from its record keeper that set forth the amount of principal, interest and attorney's fees owed by Burris. Beneficial's affidavit was not conclusory, ambiguous, or a sham, but a detailed accounting of the amount owed. In his answer, Burris issued a general denial of the amount owed. Court of Common Pleas Civil Rule 56(e) states that "[w]hen a motion for

⁸ *Pike Creek Chiropractic Ctr. v. Robinson*, 637 A.2d 418 (Del. 1994).

summary judgment is made and supported as provided in this Rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this Rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party." Given this, Burris could not rest upon his pleadings and mere denials. He instead had to set forth specific facts supported by an affidavit showing that a general issue of material fact existed. Burris did not do that. Therefore, it was appropriate for the Court of Common Pleas to enter summary judgment in favor of Beneficial and against Burris. Burris also argues that Beneficial incorrectly calculated the amount of interest owed. This is correct. Beneficial did make a mathematical error when it calculated the interest due. However, it is of no consequence because the Court of Common Pleas recognized the error and directed Beneficial to correct the error. After Beneficial corrected the error, the Court of Common Pleas entered judgment in favor of Beneficial and against Burris for the correct amount. Thus, there was no error by the Court of Common Pleas when it granted summary judgment in favor of Beneficial and against Burris.

CONCLUSION

The decisions made by the Court of Common Pleas are **AFFIRMED**.

IT IS SO ORDERED.

Very truly yours,

/S/ E. Scott Bradley

E. Scott Bradley

oc: Prothonotary's Office
cc: The Court of Common Pleas